

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

<p><b>Perry and Janice Walton,</b> Petitioners-Appellants,</p> <p><b>v.</b></p> <p><b>Linn County Board of Review,</b> Respondent-Appellee.</p>	<p style="text-align:center"><b>ORDER</b></p> <p style="text-align:center"><b>Docket No. 11-57-0116</b> <b>Parcel No. 15032 01002 00000</b></p> <p style="text-align:center"><b>Docket No. 11-57-0117</b> <b>Parcel No. 15032 01002 02002</b></p> <p style="text-align:center"><b>Docket No. 11-57-0118</b> <b>Parcel No. 15032 01002 02003</b></p> <p style="text-align:center"><b>Docket No. 11-57-0132</b> <b>Parcel No. 15032 01002 02005</b></p>
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On November 10, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants, Perry and Janice Walton, were represented by Dean A. Spina, Bradley & Riley, PC, Cedar Rapids, Iowa. The Linn County Board of Review was represented by Assistant County Attorney Gary Jarvis. The Appeal Board now having examined the entire record, having heard the testimony, and being fully advised, finds:

***Findings of Fact***

Perry and Janice Walton, owners of property located at 1710 Marion Airport Road, Marion, Iowa, appeal from the Linn County Board of Review decision reassessing their properties. This appeal involves four parcels of real estate. The real estate was classified commercial for the January 1, 2011, assessments. Walton protested to the Linn County Board of Review on the following grounds. For

Docket No. 11-57-0116, the property is not equitable as compared to other like property in the taxing district under Iowa Code section 441.37(1)(a); the property is assessed for more than authorized by law under section 441.37(1)(b); misclassification under section 441.37(1)(c); and error in the assessment under section 441.37(1)(d). For Docket Nos. 11-57-0117 and 0118, Walton asserts the parcels are misclassified. For Docket No. 11-57-0132, the property is assessed for more than authorized by law, misclassification, and error in the assessment.

The Board of Review denied the protests for Docket Nos. 11-57-0116, 0117, and 0118; but partially reduced the assessment of Docket No. 11-57-0132 to \$100,398.

Walton then appealed to this Board asserting the same grounds. Walton requests the classification for Docket No. 11-57-0116 be reversed back to agricultural realty and the remaining three dockets be classified residential.

On November 28, Walton filed a motion to supplement the hearing record with additional and new evidence regarding the size of hay bales and the equipment used to cut the crop. The Board of Review resisted the motion on December 9, 2011. This Board agrees a line must be drawn and the additional and new evidence offered will not be considered or included in the record. Also, at hearing Walton requested time to file a post-hearing brief. Walton filed a brief and PAAB received the Board of Review's response brief on December 9.

This appeal involves four parcels of real property. The subject property in Docket 11-57-0116 (airport parcel) is owned by Perry and Janice Walton. It is a privately-owned, public-use airport consisting of 37.43 acres. In 1960, the land was designated as a landing strip on privately-owned agricultural land. The Waltons began leasing the land in 1983 and purchased the airport property in 1994. Walton made several improvements to the property since its purchase. The airport has an asphalt-surfaced landing strip measuring approximately 25 x 3775 feet. In addition, Walton stated FAA clearance regulations require a minimum of 100 feet on either side of the runway to be in grass;

however, depending on the operation, the required clearance might be up to 400 feet on either side of the runway. The runway is illuminated from dusk until dawn with lights that are approximately thirty-seven feet from the edge of the runway. The land is also improved with an office having 1360 square feet; a shop with 680 square feet; a metal pole-building with 2601 square feet and 256 square feet of attached storage; a metal hangar building with 18,285 square feet; a Quonset, steel-utility building having 1,205 square feet; and additional asphalt parking. The airport parcel was reclassified from agricultural to commercial realty for January 1, 2011, and valued at \$307,004, allocating \$194,604 to land and \$112,400 to improvements. The parcel had previously been classified as agricultural realty since 1961.

The buildings comprising Docket Nos. 11-57-0117, 0118, and 0132 are assessed as buildings on leased land. The buildings are owned by Perry Walton and the land is owned by Perry and Janice Walton. Docket Nos. 11-57-0117 and 0118 each consist of one, pole-frame, metal warehouse having 2,000 square feet and valued for January 1, 2011, at \$22,100. The building comprising Docket No. 11-57-0132 consists of two, steel-frame, metal warehouses each having 13,676 square feet. This building was initially valued for January 1, 2011, at \$189,000, but the Board of Review lowered the assessment to \$100,398.

Perry Walton testified he uses the airport property primarily for agricultural purposes. He stated at hearing that approximately 31 out of 37.43 acres are devoted to agricultural activities. Walton stated most of the property is grass, and is cut for hay used for bedding and to feed horses, llamas, peacocks, swans and other various animals kept at the adjacent property with his residence. He keeps these animals to "make a little profit and to have a little enjoyment." Walton stated they will sell an animal when the animal is "big enough" and if someone wants to buy one. He further stated the sale of animals appears on his tax returns, but these returns were not provided as evidence. Walton also indicated some of the grass is piled up and used as compost/mulch for around 12,000 trees planted on

his property next to the airport. Walton stated he sold approximately thirty-two to thirty-five large round bales to two individuals in 2010 for approximately \$65-68 per bale. Walton also stated there were honeybees on the airport property in 2010 but he did not sell any of the products from the bees.

Walton also testified regarding airport uses of the property. He described the airport as a “private-owned, public-use” airport, meaning the public can take-off and land without permission and without paying a fee. Walton stated the airport serves the adjacent, developing industrial park and enables the City of Marion and other areas to accommodate all levels of government, business, and personal aviation use. According to Walton, numerous groups, including the Iowa Department of Natural Resources, the Iowa Highway Patrol, and area schools use the airport for matters related to aviation. Walton indicated these public uses do not generate revenue.

In addition to the public uses, Perry and Janice Walton also own and operate P & N Flight and Charter (P & N), a corporation operating out of the airport property since 1983. This for-profit corporation offers a variety of fixed-wing aircraft and helicopter services, including: flight training, aircraft rental, aircraft maintenance, 24-hour aircraft charter, and an aerial photography service. The airport also has hangar space available to rent or lease for long-term storage of other aircraft. Walton stated P & N owns six airplanes and two helicopters and all eight are available for P & N’s use. Additionally, Walton stated he and his wife own two personal planes that are not insured for use in the business. The documents and testimony indicate anywhere between thirty and fifty planes total are based at the airport. Walton estimated the airport accommodated approximately 11,000 “operations” each year. Walton described a take-off and landing as two separate operations; so approximately 5500 airplanes take-off and land each year. Walton believed less than 50% of the operations were done by P & N aircraft.

P & N offers flight instruction for both airplanes and helicopters and employs four certified flight instructors: Perry Walton, Jan Walton, Bonnie Roth, and Ryan Pic. Walton indicated that all

“ground school” courses are held at Kirkwood Community College and taught by Jan Walton.

However, there is also a FAA computer-testing facility at the airport. He also stated that any piloting instruction occurs in the air and there is “not really” any instruction taking place on the airport property. Walton admitted that pre-flight ground checks were performed at the airport but characterized these pre-flight procedures as “being safe,” as opposed to flight instruction. Walton also admitted there was some instruction on the ground prior to and during take-off.

In addition to flight instruction, P & N offers aircraft rental, an aircraft charter service offering twenty-four hour service anywhere in the Midwest and an aerial photography service. P & N advertises this aerial photography service in the Marion Airport News, a monthly newsletter published by the company.

The airport parcel includes a shop where certified mechanics maintain and repair both P & N aircraft and other private aircraft as needed. According to its advertisement in the Marion Airport News, P & N employs a full-time mechanic who is on duty six days a week. P & N also has fuel available for purchase by members belonging to its fuel club, although Walton stated most of the fuel is used by P & N. However, someone needing fuel but not belonging to the fuel club may purchase a temporary club membership. According to Walton, selling fuel only to club members, and not the general public, allows the airport to avoid having the pumps certified and regulated by the State of Iowa.

Dave Ellis, Deputy Linn County Assessor, testified on behalf of the Board of Review. Ellis testified the Assessor’s office reviewed many agricultural properties to determine the appropriate classification for the 2011 assessment year. Ellis testified he reviewed the airport property and determined the primary use was commercial because of P & N’s extensive business activities. Ellis pointed to P & N’s website and the Marion Airport News as support for the Assessor and Board of

Review's decision. Ellis testified the property is a fixed-based operation which requires a landing strip and he believed P & N owned and operated six fixed-wing aircraft and two helicopters.

Ellis believed only a small portion of the airport land was being used to bale hay. In his opinion, it would be difficult to harvest hay between the lights along the runway. Ellis also stated he bales hay with similar equipment and believes it would be tough to "harvest" grass or hay that is eight to nine inches tall before cutting. Ellis did testify that in the summer of 2010 he saw two or three large, round hay bales near the property line.

While the airport property is used by many organizations or individuals for free, and undoubtedly provides a benefit to the City of Marion and the surrounding area, there is an abundance of evidence in the record to support a finding that the airport property's land and buildings are primarily used for commercial purposes. Walton's direct testimony regarding P & N's for-profit use of the airport property was downplayed and disingenuous. On cross-examination, it became clear the property was primarily used to accommodate P & N's commercial aviation operation. The operation would not be possible without the landing strip and supporting structures. It is insincere to assert that flight instruction only occurs once in the air, as pre-flight ground checks are an integral part of flight training. Important instruction definitely occurs before take-off and landing.

Ultimately, there was little evidence offered to show the property was used primarily as agricultural property with a good faith intent to profit from agricultural activities. There was testimony indicating the grass from between the runway and runway lights was piled and used for compost and mulch around trees planted around the Waltons' adjacent dwelling property. There was also testimony of the casual and occasional sale of an animal "if someone wants to buy one." The fact that Walton bales hay in the areas not used by the airport, and sells some of the excess, does not mean the property's primary use is devoted to agricultural activities.

Walton testified the buildings in Docket Nos. 11-57-0117 and 11-57-0118, which are buildings on leased land, should be classified as residential realty instead of commercial realty. Walton stated these buildings are used to store agricultural equipment, personal airplanes, motorcycles, cars and motor homes. Walton opines that the storage of personal planes and other personal property in the buildings makes them residential realty. Walton did not contest the values on these parcels.

Ellis testified regarding Docket Nos. 11-57-0117 and 11-57-0118. In his opinion, the buildings should be commercial realty because they are aircraft hangar buildings and he assumed they were being used like all the other buildings on the property.

Walton also testified the two buildings comprising Docket No. 11-57-0132 are used to store personal property and should also be classified residential. But on cross-examination, Walton indicated P & N uses one building for storage and the other building is leased for others to store their personal aircraft. Given this inconsistent testimony and the testimony regarding the airport property and flight instruction, we find Docket Nos. 11-57-0117, 0118, and 0132 are properly classified as commercial realty.

Walton also challenged the value of the two hangars comprising Docket No. 11-57-0132. Walton believes the assessment should be \$42,931 for both structures combined. These two-52 x 263 buildings were originally located at the Eastern Iowa Airport. They were dismantled, transported to, and erected on the airport property site sometime in 2008. Walton believed it cost \$43,000 to dismantle, move, and rebuild the structures, but he was not clear on what exactly was included in that cost. We note the *Iowa Real Property Appraisal Manual* includes the direct cost of materials, indirect costs, and labor.

Ellis testified he determined the January 1, 2011, assessed value of the buildings using the 1977 *Iowa Appraisal Manual* for replacement cost less depreciation, while factoring to consider past equalization orders. He valued the two buildings at \$189,000 combined. This original assessment

valued the buildings as if they were brand new in 2008. Once learning the buildings were older, the Board of Review lowered the assessment to \$100,398 combined. Ellis believes this is an appropriate value, given the new concrete-footings and the twelve, 14 x 18 concrete slabs that were installed when the buildings were moved.

The Appeal Board concludes Walton did not show the buildings in Docket No. 11-57-0132 were over-assessed and did not show what the correct value should be.

Finally, Walton asserts the assessed value of the airport land is inequitable compared to other similar properties located nearby. While Walton argues the airport property should be classified agricultural, he submitted equity comparables to support the value of the subject parcel if the classification remains commercial.<sup>1</sup> Two of the comparables are owned by Medco Holding Company, one is owned by Robert Verhille, one is owned by Puma, Inc., and one is owned by Culver Lawn and Landscape. The properties owned by Medco and Verhille were agriculturally classified and valued for the 2011 assessment and do not provide a good basis for comparison. The most comparable property, in Walton's opinion, is the commercially classified Culver parcel having 25.58 acres. The first two acres of the Culver property are valued at \$25,000 and the remaining 23.48 acres are valued at \$810 per acre. The first three acres of the Puma property are valued at \$25,000 per acre and the remaining 8.86 acres are valued at \$5,000 per acre.

The first two acres of the airport parcel are valued at \$25,000 per acre, the next eight acres are valued at \$5,000 per acre, and the remaining 27.43 acres are valued at \$810 per acre. Ellis explained the acres are valued according to the types of buildings on the property and the density of use throughout the parcel. To illustrate, Ellis stated the airport property's first two acres are valued at \$25,000 because that is where many of the buildings (office, shop, pole-building, hangar building, Quonset building, asphalt parking) are located. The next eight acres were valued at \$5,000 per acre

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<sup>1</sup> If the property is classified as agricultural realty, it would be valued using only the productivity and net earning capacity formula set forth in Iowa Administrative Code rule 701—71.1(3) and the *Iowa Real Property Appraisal Manual*.



because that is approximately where the remaining hangar buildings were located. The remaining 27.43 acres were assessed much lower (\$810 per acre) because these acres did not have buildings on them and were considered excess acres. To compare, Ellis stated the first two acres of the Culver property were valued at \$25,000 per acre because that is where the majority of the structures are located on that property. The remaining 23.48 acres were valued at \$810 per acre because it was excess land and any structures located on that land were greenhouses/growing houses of much lower construction quality. All of the above values are pre-adjusted, meaning they need to be adjusted for past equalization orders.

This Board finds Ellis's explanation reasonable and consistent, and does not believe the Culver or Puma properties show that the airport property is inequitably assessed.

Taking the record as a whole, the preponderance of the evidence does not show that the four parcels were misclassified, were over-assessed, or that there is inequity in the assessment. Therefore, we affirm the classification and valuation of Docket Nos. 11-57-0116, 11-57-0117, 11-57-0118 and 11-57-0132.

### ***Conclusions of Law***

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*

*Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property classified other than agricultural is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21 (2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

Walton's main claim in this appeal is that the subject parcels are misclassified. Walton asserts the properties are misclassified (error) and the actual classification for the airport property should be agricultural and the remaining three parcels residential. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. Classifications are based on the best judgment the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* r. 701.71.1(2). Property is to be classified "according to its present use". *Id.* r. 701-71(1). Under administrative regulations adopted by the Department of Revenue, a property's classification is determined based on the primary use of the property. *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878,880 (Iowa 1989). There can only be one classification per property. Iowa Admin. Code r. 701—71.1(1). A building or structure on leased land is considered a separate property and may be classified differently than the land upon which it is located. *Id.*

Under Iowa Administrative Code rule 701—71.1(3), agricultural real estate includes all tracts of land and the improvements and structures located on them which are in good faith used primarily

for agricultural purposes. Land and the nonresidential improvements and structures located on it are considered to be used primarily for agricultural purposes if its principal use is “devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.” Iowa Admin. Code r. 701—71.1(3).

Commercial property is defined in rule 71.1(5). Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. Iowa Admin. Code r. 701—71.1(5).

Finally, residential property is defined in rule 71.1(4). Residential real estate includes land and buildings “primarily used or intended to be used for human habitation.” Buildings used primarily or intended for human habitation include dwellings as well as garages or storage sheds used primarily as a part of, or in conjunction with, the dwelling. We do not believe the buildings comprising Docket Nos. 11-57-0117 and 0118 fit within the definition of residential real estate.

The record as a whole indicates the airport property is primarily used by P & N Corporation as a place of business where aviation services are offered for sale. While Walton may bale some hay on the property, the property’s primary use is not devoted to growing crops or raising livestock for intended profit.

Walton also asserted a claim of inequity in the assessment. To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965).

The six *Maxwell* criteria include evidence showing:

“(1) that there are several other properties within a reasonable area similar and comparable. . . (2) the amount of the assessments on those properties, (3) the actual

value of the comparable properties, (4) the actual value of the (subject) property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.” *Id.* at 579-580.

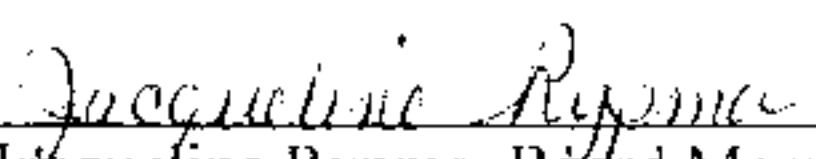
The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). The preponderance of the evidence did not prove inequitable assessment under either test.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). There is insufficient evidence in the record to support Walton’s claim that the buildings on Docket No. 11-57-0132 are over-assessed.

THE APPEAL BOARD ORDERS the assessments of the Walton properties located on Marion Airport Road, Marion, Iowa, as determined by the Linn County Board of Review are affirmed.

Dated this 21 day February, 2012.

  
Richard Stradley, Presiding Officer

  
Jacqueline Rypma, Board Member

  
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>2-21</u> , 2012.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>Dean Spina</u>